

APPENDIX B

Appendix B

Process and Factors for “Commercial Unavailability” of Low-Leaking Valve or Packing Technology

Summary: This Appendix outlines a process to be followed and factors to be taken into consideration to establish that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not “commercially available” pursuant to Paragraph 100 of the Consent Decree. Factors and procedures other than those identified in this Appendix may also be utilized to establish that a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not commercially available.

A. **Factors.** The following factors shall be taken in to account for determining the availability of safe and suitable Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technologies:

1. Valve type;
2. Valve service and operating conditions;
3. Type of refinery process equipment in which the valve is used;
4. Seal performance;
5. Service life;
6. Packing friction;
7. Temperature and pressure limitations; and
8. Retrofit applications (*e.g.*, re-piping or space limitations).

The following factors may also be relevant for consideration, depending on the process unit or equipment in use at the refinery:

9. Valve or valve packing specifications identified by the licensor of the process unit or equipment in use at the refinery (including components that are part of a design package by a specialty-equipment provider as part of a larger process unit); or
10. Valve or valve packing vendor or manufacturer recommendations for the relevant refinery unit and/or process unit components.

B. **Process.** The following procedure shall be followed for determining the availability of a Certified Low-Leaking Valve or Certified Valve Packing Technology:

1. The Settling Defendant must contact at least three vendors of valves and three vendors of valve packing technologies prior to asserting a claim that Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology is not commercially available.

If fewer than three vendors of valve or valve packing technologies are contacted, the determination of whether such fewer number is reasonable for purposes of this Consent Decree shall be based on Factors 9. and/or 10. above, or on a demonstration

that fewer than three vendors offer valves or valve packing technologies for the service and operating conditions of the valve to be replaced, in consideration of Factors 1. through 8. above, as applicable.

2. The Settling Defendant shall obtain a written representation from each vendor contacted or equivalent documentation that the valve or valve packing does not meet the specifications for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology.
3. The Settling Defendant shall prepare a written report fully explaining the basis for each claim that a valve or valve packing is not commercially available, to include all relevant documentation and other information supporting the claim. Such report shall also identify the commercially-available valve or packing technology that comes closest to meeting the requirements for a Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology that is selected and installed by the Settling Defendant pursuant to Paragraph 100 of the Consent Decree. Such report shall be included in the Compliance Status Report required by Paragraph 108 of the Consent Decree, for the period in which the valve or valve packing is replaced.

B. EPA Review of Claim of Commercial Unavailability. Upon discretionary review by EPA of any claim of Commercial Unavailability, if EPA disagrees that a valve or valve-packing technology is commercially unavailable, EPA shall notify the Settling Defendant in writing, specifying the valve or valve packing EPA believes to be commercially available and the basis for its availability for the service and operating conditions of the valve. Following receipt by the Settling Defendant of EPA's notice, the following shall apply:

1. The Settling Defendant is not required to retrofit the valve or valve packing for which the unavailability claim was asserted (unless otherwise required to do so pursuant to some other provision of this Consent Decree).
2. EPA's notification shall serve as notice to the Settling Defendant of EPA's intent that a future claim of Commercial Unavailability will not be accepted for a. the valve or valve packing that was the subject of the unavailability claim, or b. for a valve or valve packing in the same or similar service, taking into account the factors identified in this Appendix. If the Settling Defendant disagrees with EPA's notification, the Settling Defendant and EPA may informally discuss the basis for the claim of Commercial Unavailability. EPA may thereafter revise its notification, if necessary.
3. If the Settling Defendant makes a subsequent Commercial Unavailability claim for the same valve or valve packing (or valve or valve packing in the same or similar service) that was the subject of a prior unavailability claim which was not accepted by EPA, and such subsequent claim is also denied by EPA on the same basis as provided in EPA's prior notification, the Settling Defendant shall retrofit the valve or valve packing with the commercially available valve or valve packing technology at the next unit turnaround.

4. Any disputes concerning EPA's notification to the Settling Defendant of the commercial availability of a valve or valve packing technology in a particular application pursuant to Paragraph B.3 of this Appendix shall be addressed under the Dispute Resolution provisions in Section XV of this Consent Decree.